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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.14 of 2000

Sridevi Company
retd by its Partner
T.Sigamani .. Appellant/Complainant

vs.

N.A.S.Jeyaraj .. Respondent/Accused

This appeal is filed against the Judgment in C.A.No.1 of 1995 dated 15.7.1999 of the learned II Additional Sessions Judge, Erode setting aside the conviction and sentence passed by the Judicial Magistrate No.3, Erode in C.C.No.334 of 1993 dated 25.11.1994.

For Appellant : Mr.N.Senthilkumar

For Respondent : Mr.R.Ganesh Kumar

JUDGMENT

This appeal has been preferred against the judgment in C.A.No.1 of 1995 on the file of the Court of II Additional Sessions Judge, Erode. The complainant in C.C.No.334 of 1993 on the file of the Court of Judicial Magistrate No.3, Erode, who had succeeded before the trial Court but lost the same before the first appellate Court, is the appellant herein.

2. The short facts of the private complaint in brief relevant for th purpose of deciding this appeal are as follows:

The accused is the one of the customers of the complainant, who is indulged in textile business. The accused is a partner of "Solai Fabrics " which had dealing with the complainant. The complainant used to supply

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the goods on credit basis to the accused as such a sum of Rs.1,66,723.50ps is due from the accused as on 25.1.1993. Towards the part payment to discharge the said debt, the accused had issued a post dated cheque dated 18.6.1993 in favour of the complainant for a sum of Rs.1,66,500/-. The accused is liable to pay interest at 21% per annum as per trade usage and custom. The cheque was drawn in the name of Union Bank of India, Tuticorin Branch. When the cheque was presented for collection, the same was returned with an endorsement"Insufficient funds". The complainant had intimated the said fact through a notice dated 12.07.1993. After receiving the said notice, the accused had sent a reply notice on 17.7.1993 with frivolous allegations. Even after a lapse of 15 days from the date of receipt of the notice, the accused had not chosen to repay the debt amount. Hence, the complaint.

3. After recording the sworn statement of the complainant, the learned Judicial Magistrate had taken the complaint on file in C.C.No.334 of 1993 and on appearance of the accused on summons, copies under Section 207 of Cr.P.C were furnished and when the offence was explained to the accused he pleaded not guilty.

4. On the side of the complainant, the complainant has examined himself as P.W.1 and Exs P1 to P18 were marked.

5.P.W.1 in his evidence would depose that he is conducting a textile business in the name and style of "Sridevi Company" which is a partnership firm and other partner is his brother Mahendran and that the accused owes a sum of Rs.1,66,723/50 in purchasing the textile merchandise from the said firm and that the accused had lastly purchased the goods on 25.1.1993 and to discharge the said debt, the accused had drawn a cheque for Rs.1,66,500/- dated 18.6.1993 under Ex P1 and that he had presented the said cheque on 30.6.1993 in the Catholic Syrian Bank for realisation , the same was returned with an endorsement that "there is no sufficient funds in the drawer's account" . Exs P2 and P3 are the copy of bank chalan and bank memo respectively. On 12.7.1993, he had issued a notice to the accused informing about the dishonour of Ex P1 cheque. Ex P4 is the office copy of the notice. The original of Ex P4 notice was received by the accused on 17.7.1993 under ExP5 acknowledgment. Ex P6 is the reply notice sent by the accused. P.W.1 has also produced Exs P7 to P11 bills to show that the accused had received the supply of goods from the complainant. Ex P12 is the partnership deed for Sridevi Company. The said Company was registered under Ex P13 on 16.10.1984. Ex P14 to Ex P17 are the lorry receipts to show that the goods were despatched to the accused through the lorry by the complainant. Ex P18 is the ledger extract.

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6. When the incriminating circumstances were put to the accused, he denied his complicity with the crime. The accused has examined D.W.1 an Inspector of Police and also exhibited Exs D1 to D10. After going through the oral and documentary evidence let in by both sides, the learned trial Judge has come to a conclusion that the offence under Section 138 r/w 142 of the Negotiable Instruments Act has been made out and consequently convicted and levied a fine of Rs.21,000/- with default sentence and further he has also awarded a sum of Rs.20,000/- from out of the said fine under Section 357 Cr.P.C. as compensation. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal in C.A.NO.1 of 1995 before the Second Additional Sessions Judge, Erode, who after carefully considering the submissions made by the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent, has held that an offence under Section 138 of the Negotiable Instruments Act was not attracted against the accused and accordingly allowed the appeal thereby setting aside the Judgment of the trial Court. Hence this appeal before this Court by the complainant.

7. Now the point for determination in this appeal is whether the findings of the first appellate Court is perverse in nature to warrant any interference from this Court?

8 Heard Mr.N.Senthilkumar, learned counsel for the appellant and Mr.R.Ganesh Kumar, learned counsel for the respondent and considered their rival submissions.

9.The Point:

According to the complainant, on the date of drawal of Ex A1 cheque by the accused, the amount due to the complainant under the business transaction between the complainant and the accused was Rs.1,66,723/50. Apart from the oral evidence of P.W.1, he has also produced Exs P8 to P11 which are receipts for the supply of goods by the complainant to the accused. The xerox copy of Exs P8 to P11 were also marked on the side of the accused as Exs D5 to D8. Ex P8 is for Rs.63,000/-; Ex P9 is for Rs.36,000/-; Ex P10 is for Rs.33,000/- and Ex P11 is for Rs.30,000/-. EX P18 is said to be the ledger produced before the trial Court. In the cross examination, P.W.1 would admit that Ex P18 was not produced before the Income Tax authorities. He would further admit that the complainant is not an assessee to the Commercial Tax but they are paying income tax. But Ex P18 which relates to the year 1992-93 was not produced before the Income Tax Officials. Hence no authenticity can be given to Ex P18. So we are left

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with only Ex P8 to Ex P11 evidencing the business transactions which took place between the complainant and the accused in respect of this claim. If we add the amount mentioned in Exs P8 to P11, it comes to Rs.1,62,000/- (Ex P8 for Rs.63,000/- ,Ex P9 for Rs.36,000/-, Ex P10 for Rs.33,000/- and Ex P11 for Rs.30,000/- = Rs.1,62,000/-).

10. D.W.1 is an Inspector of Police, who depose that one Mr.Mahendran, who is the partner of the complainant company has preferred a complaint under Ex D4 alleging that he came to Tuticorin to collect the amount due from his customers and the accused wherein the accused had threatened him with dare consequences and that the accused had preferred a complaint before the Deputy Superintendent of Police who in turn had sent the complaint to him(D.W.1) for investigation and that on the basis, he sent a word for both the complainant and the accused and on behalf of the complainant , it was agreed that only a sum of Rs.40,000/- is due from the accused and out of that, Rs.20,000/- was paid in his presence and to that effect one of the partners to the complainant's company viz., Mahendran had given a statement under EX D9.

11. Apart from this, to attract an offence under Section 138 of the Negotiable Instruments Act, the complainant must prove that the cheque in question was drawn for, to discharge the debt in whole or in part. As per Explanation to Section 138 of the Negotiable Instruments Act, " debt or other liability" means a legally enforceable debt or other liability. So it is the bounden duty of the complainant to prove beyond any reasonable doubt that the legally enforceable debt or other liability was in existence on the date of drawal of ExA1 cheque by the accused. As per Exs P8 to P11 documents produced by the complainant, the amount due on the date of drawal of the cheque was only Rs.1,62,000/-.A prudent man will not give a cheque under Ex P1 for a sum of Rs.1,66,500/- which is definitely higher than the amount, due under Ex P8 to Ex P11 on the date of drawal of Ex P1 cheque.

12. The learned counsel appearing for the appellant would draw the attention of this Court to Section 138 of the Negotiable Instruments Act and contend that the presumption is to be drawn under Section 139 of Negotiable Instruments Act against Ex P1 is that only for discharge of a debt in whole or in part, the said cheque was drawn in favour of the complainant. But as I have already pointed out for a lesser amount of Rs.1,62,000/-, it cannot be said that Ex P1 was drawn for Rs.1,66,500/- in favour of the complainant. The presumption under Section 139 of the Negotiable Instruments Act is only rebuttable and in a way to rebut the presumption, the accused had examined D.W.1, the Inspector of Police who is no way connected with this transaction has deposed before the trial Court that only a sum of Rs.40,000/- was due under the business transaction between the accused and complainant and to that effect one of the partners of the complainant company had given a statement under Ex D9.

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Under such circumstances, I do not find any reason to interfere with the well considered judgment of the first appellate Court, which does not suffer from any illegality or infirmity. Point is answered accordingly.

9. In fine, the appeal is dismissed confirming the Judgment in C.A.No.1 of 1995 on the file of the Court of Second Additional Sessions Judge, Erode.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Judicial Magistrate No.3,Erode

2. -do- the Chief Judicial Magistrate, Erode.

3. II Additional Sessions Judge, Erode

4.-do- Thro' Prl. Sessions Judge, Erode.

+1 cc to Mr.N.Senthil Kumar, Advocate Sr.No.16592.

+1 cc to Mr.A.D.Jagadish Chandra, Advocate Sr.No.16566.

KV(CO)
dcp/22.3.07

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